IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.12510 OF 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KHASOR DHEMARBHAI KARSANBHAI - Petitioner(s)

Versus

DEPUTY COLLECTOR (MID-DAY MEALS SCHEME) AND ELECTION OFFICER & 2 - Respondent(s)

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Appearance :
MR. TUSHAR MEHTA for Petitioner.
MS. PAURAMI SHETH, AGP for Respondent No(s).: 1.
MR. S.N. THAKKAR for Respondent No(s).: 2.
NONE for Respondent No(s).:3.
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CORAM :HONOURABLE MR.JUSTICE R.S.GARG &
HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 15/07/2005

ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. The present matter raises a very small, but, ticklish

question for interpretation.

2. Learned Counsel for the petitioner submits that the Election Officer, misinterpreting by-law 40(b)(1) of the By-laws of respondent no.2, has rejected the claim of the petitioner for inclusion of his name in the Voters List. His submission is that a fair understanding of the by-law would make it clear that for contesting the election to the Managing Committee of respondent no.2, one should be a Member of the Managing Committee of his primary level cooperative society.

3. Mr.Mehta, learned Counsel for the petitioner, submits that the petitioner is a Member of The Malan Milk Producers Cooperative Society Ltd.; by a Resolution dated 21st April, 2005, the said Malan Milk Producers Cooperative Society Ltd. proposed to refer the name of the petitioner as a delegate voter to respondent no.2-Society for inclusion of his name in the list of the voters. Respondent no.3, on 6th June, 2005, raised an objection that as the petitioner was not a Member of the Managing Committee of The Malan Milk Producers Cooperative Society Ltd., his name could not be included in the Voters List. The objection was upheld and the petitioner's name was excluded from the final list of voters. The submission of the learned Counsel for the petitioner is that for inclusion in the Voters List, two requirements are that one

must be a Member of the primary level cooperative society and secondly, his name should be referred as a delegate. His further submission is that by-law 40(b)(1) puts a bar against a person for contesting the election, who is not a Member of the Managing Committee of his primary level cooperative society. The submission, in nutshell, is that the learned Election Officer misapplied the by-law and illegally directed deletion of the name of the petitioner from the Voters List.

4. None appears for the original objector (respondent no.3). Ms. Sheth, learned AGP for respondent no.1, submitted that the Election Officer was belabouring under a *bona fide* apprehension that if one can't contest the elections, then, he can't be a voter. Her submission is that the Election Officer did pass an order *bona fide* and without any attributable motives.

5. Mr.Thakkar, learned Counsel for respondent no.2, however, submitted that a fair understanding of by-law 40(b)(1) would provide a bar against contesting of the elections and not against inclusion of the name in the Voters List. His submission is that so long as the delegate continues to be a Member of the primary level cooperative society, he is entitled to be included in the Voters List.

6. Rule-5 of the Gujarat Specified Cooperative Societies Elections to Committees Rules, 1982 reads as under:

> "**5. Particulars to be included in provisional list of voters.-** (1) The provisional list of voters, in the case of individual share holders, shall contain the name, father's/husband's name, surname (if any) of every person entitled to be registered as a voter, with such other particulars as may be necessary to identify him.
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> (2) Where a society is a member of a specified society, the specified society shall call for the name of the delegate duly authorised to vote at an election on behalf of the affiliated society, so as to reach it within ten days next after the date of drawing up the accounts. While communicating the name of its delegate to the specified society, the affiliated society shall enclose a copy of the resolution of the society or its committee under which the delegate is so authorised. The specified society shall include in the list of voters the names of all such delegates as have been communicated to it before the date fixed for publication of the provisional list. In addition to the names of the delegates, the list shall contain the names of the affiliated societies, their registration numbers and addresses and the names of constituencies, if any, to which they belong. A society which has communicated the name of its delegate shall by like resolution be permitted to change the name of its delegates upto the sixth day before the date appointed by the Collector under rule 16 of said rules for making nominations."

From the above referred rule, it would clearly appear that where a society (primary cooperative society) is a Member of a specified society, then, such primary level cooperative society shall communicate the name of its delegate to the specified society, along with a copy of the resolution of the society or its committee, under which the delegate is so authorised. It would also appear that the specified society

shall include, in the list of voters, the names of all such delegates, as have been communicated to it before the date fixed for publication of the provisional list. In the present matter, undisputedly, the name of the petitioner was sent as a delegate by The Malan Milk Producers Cooperative Society Limited.

The respondent no.3 had raised an objection that as the petitioner was not a Member of the Managing Committee, his name could not be included in the Voters List.

7. By-law 40(b)(1), necessary for disposal of the present Writ Application, reads as under:

> "By-law 40(b): Representative of the member society shall not be qualified for election unless he -
>
> (1) is a member of the managing committee of the member society as on 31st March of the previous year."

From the above, it would clearly appear that the person, whose name is included in the Voters List, if wants to contest the election, then, he will have to prove that as on 31st March of the previous year, he was a member of the Managing Committee of the affiliated/primary level cooperative society.

8. Inclusion of somebody's name in the Voters List would be different from conferring a right upon somebody to contest

the election. In the present matter, the prayer of the petitioner simply is that even if he is not entitled to contest the elections, he is entitled to exercise his right of franchisee in the ensuing elections.

9. We make it clear that as on today, the petitioner is not entitled to contest the election of respondent no.2, but, would certainly be entitled to exercise his right of franchisee.

10. The order passed by the learned Election Officer is quashed. He is directed to correct the Voters List and include the name of the petitioner in the final list of the voters. The petition is allowed. Rule is made absolute. No costs.

[***R.S.Garg, J.***]

[***Ravi R.Tripathi, J.***]

*kamlesh**